No. 24-6481

ORIGINAL

Supreme Court, U.S.
FILED
NOV - 8 2024
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IN THE

SUPREME COURT OF THE UNITED STATES

FREDERICK STAMPONE — PETITIONER
(Your Name)

vs.

MICHIGAN SUPREME COURT, ET AL.) — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT REHEARING
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

FREDERICK STAMPONE 713769
(Your Name)
NEWBERRY CORRECTIONAL FACILITY
13747 E. COUNTY ROAD 428
(Address)

NEWBERRY, MI 49868
(City, State, Zip Code)

(906) 293-6200
(Phone Number)

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7

QUESTION(S) PRESENTED

I- PETITIONER STAMPONE IS OVER 71 YEARS OLD WITH NO CRIMINAL HISTORY, WAS ARRESTED IN THE SAME COUNTY WARRENT WAS ISSUED ON TRUMPED UP CHARGES OF KIDNAPPING HIS WIFE AND ~~QUMPE~~ QUALIFIED FOR A SPEEDY TRIAL. PETITIONER ACERTED HIS RIGHT FOR A SPEEDY TRIAL IN OPEN COURT AND BY WAY OF MOTION. WAS MR. STAMPONE DENIED HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL BY 21 MONTHS OF DELAY THAT RESULTED IN SIGNIFICANT PREJUDICE TO DEFENSE AN DEFENDANT?

TRIAL COURT ANSWERED: NO
PETITIONER ANSWERED: YES

II- IS MR. STAMPONE'S SENTENCE THAT IS NEARLY TWICE OF THE GUIDELINES MINIMUM SENTENCE RANGE A DISPROPORTIONATE SENTENCE?

TRIAL COURT ANSWERED: NO
PETITIONER ANSWERED: YES

III- DID MR. STAMPONE EXHAULT ALL HIS STATE REMIDIES ON THESE TWO ISSUES?

UNITED STATES COURT OF APPEALS REHEARING ANSWER: NO
PETITIONER ANSWERED: YES

IV- IS MR. STAMPONE ENTITLE TO MONETORY DAMAGES IN A COMPLAINT?

UNITED STATES DISTRICT COURT ANSWERED: NO
PETITIONER ANSWERED: YES

V- DOES THIS COURT NEED TO ENTER A RULE STATING: ALL STATES COURTS SHALL EXHAULT PLAINTIFF'S ~~ADE~~ REMIDIES WITH-IN THREE YEARS OR PLAINTIFF SHALL BE RULED THAT HE EXHAULTED HIS STATE REMIDIES?

UNITED STATES SUPREME COURT ANSWERED: _____
PETITIONER ANSWERED: YES

VI- DOES THIS COURT CONSTRUES THE PLEADINGS LIBERALLY AND HOLDS THEM LESS STRINGENT STANDARD THAN FILED BY ATTORNEYS?

LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

SEE NEXT ATTACHED PAGE FOR LIST OF PARTIES

RELATED CASES

SEE CASES IN COMPLAINT IN DISTRICT COURT, ALSO THE FOLLOWING:

1- UNITED STATES V. JENNING 860 FED. APPX. 287 2021 U.S. APP. LEXIS 19669 ** 2021 WL 2767840 THE COURT RULED COVID VIRUS IS NOT AN EXCUSE TO VIOLATE THE RIGHT TO SPEEDY TRIAL AND JENNING WAS AQUITED ON THE FACT THAT HE SPENT MORE TIME IN JAIL THEN WHAT THE SENTENCE SHOULD HAVE BEEN FOR THAT CRIME.

2- DOGGETT V. UNITED STATES, 505 US 647, 112 S Ct 2686, 120 L Ed 2d 520 (1992)

3- BARKER V. WINGO, 407 US 514; 92 S Ct 2182; 33 L. Ed 2d 101 (1972)

4- ~~STURT~~ STRUNK V. UNITED STATES, 412 US 434; 93 S Ct 2260; 37 L Ed 2d 56 (1973)

5- TERRY GEN BOLLEA V. GAWKER MEDIA, LLC al. CASE # 8:12-CV-02348-T-27TBM; TERRY GEN BOLLEA FILED SUIT AGAINST GAWKER MEDIA FOR ONE HUNDRED MILLION DOLLARS AND WAS AWARDED 115 MILLION DOLLARS. MOST OF THAT AWARD WAS FOR ALL THE MENTAL ANGUISH AND SEVER EMOTIONAL DISTRESS DONE WITH WANTON AND RECKLESS DISREGARD OF CONSEQUENCES TO PLAINTIFF.

LIST OF PARTIES

OFFICIAL COURT OF APPEALS CAPTION FOR 24-1252

FREDERICK STAMPONE

Plaintiff - Appellant

v.

MICHIGAN SUPREME COURT, Official and or personal capacity; JULIE CLEMENT, Clerk, official and or personal capacity; MICHIGAN COURT OF APPEALS, Official and personal capacity; JAMES R. REDFORD, Judge, Michigan Court of Appeals, official and or personal capacity; MARK T. BOONSTRA, Judge, Michigan Court of Appeals, official and or personal capacity; CHRISTOPHER P. YATES, Judge, Michigan Court of Appeals, official and or personal capacity; 17TH CIRCUIT COURT, Judge, official and or personal capacity; CURT A. BENSON, Judge, official and or personal capacity; BRITTAN AMANN, Personal and/or official capacity; BENJAMIN AMANN, Personal and/or official capacity, aka Benjamine Amann, Personal and/or official capacity; JORDAN KRAMER, Personal and/or official capacity; KENT COUNTY PROBATE COURT, Judge, official and/or personal capacity; DAVID M. MURKOWSKI, Judge, official and/or personal capacity; UNKNOWN PARTY, Prosecutor Office; CHRISTOPHER R. BECKER, Prosecutor; ELIZABETH A. BARTLETT, Assistant Prosecutor; MICHAEL TANIS, Detective Deputy; MICHIGAN DEPARTMENT OF CORRECTIONS; RANDEE REWERTS, Warden; [UNKNOWN] FINDLAY, Officer; [UNKNOWN] MAIGA, Sergeant, aka [unknown] Meiga; S. REDDIN, Classification Warehouse; [UNKNOWN] MORRIS, Lieutenant; [UNKNOWN] HARPER, Officer; S. FLEISHER, Officer; C. SHINABARGER, Officer; [UNKNOWN] LYON, Staff member; L. LOOMIS, Librarian; [UNKNOWN] EDGAR, Doctor; [UNKNOWN] GILES, Officer; [UNKNOWN] FARRELL, Officer; M. BROWN; CHARLES EGELER RECEPTION AND GUIDANCE CENTER; T. HARDRICK, Officer; [UNKNOWN] RENO, Lieutenant; 63RD DISTRICT COURT; SARA J. SMOLENSKI, Judge; FELIX TARANGO, Assistant Prosecutor; CARSON CITY CORRECTIONAL FACILITY; J. NICHOLAS BOSTIC, Attorney; BOSTIC & ASSOCIATES; STEVEN C. HAEHNEL; HAEHNEL LAW FIRM; HEIDI E. WASHINGTON, Michigan Department of Correction Director; JEREMY BUSH, Deputy Director; [UNKNOWN] WHITE, Officer

Defendants - Appellees

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CASES

STATUTES AND CONSTITUTIONAL PROVISIONS

RULES

OTHER AUTHORITIES

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

[ ] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was JULY 17, 2024.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: SEPT. 18, 2024, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[ ] For cases from **state courts:** (SEE COMPLAINT)

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SEE TABLE OF AUTHORITIES CITED, COMPLAINT FILED IN DISTRICT COURT AND U.S CONST, AM VI

CONTINUE ON NEXT PAGE

STATEMENT OF THE CASE

PETITIONER IS AT A GREAT DISAVANTAGE BECAUSE HE IS PRO SE, LOCKED UP IN NEWBERRY CORRECTIONAL FACILITY, HAS NO MONEY IN PRISON ACCOUNT FOR COPIES, BEING DEPRIVED OF LAW LIBRARY, LOWER COURTS REFUSE TO SENT PETITIONER A COPY OF HIS COMPLAINT BECAUSE PETITIONER HAS NO MONEY TO PAY FOR IT. THERE FOR, PETITIONER RELIES OF HIS COMPLAINT/PETITION FILED IN THE DISTRICT CORT FOR THIS STATEMENT OF THE CASE. PETITIONER ALSO RELIES ON THE NEXT ATTACHED PAGES MARKED PAGES 26 THROUGH 41 FOR THIS STATEMENT OF THE CASE.

PETITIONER FILED A COMPLAINT FOR HABEAS CORPUS INSTEAD OF A PETITION BECAUSE IN THE COURT OF APPEALS OF MICHIGAN THEY USE A COMPLAINT FORM INSTEAD OF A PETITION. (SEE EXHIBIT `A´ FORM TORN OUT OF MICHIGAN COURT OF APPEALS BOOKLET.)

CONTINUE ON FOLLOWING PAGES

II. DEFENDANT WAS DENIED HIS CONSTITUTIONAL RIGHT TO A SPEEDY TRIAL BY 21 MONTHS OF DELAY THAT RESULTED IN SIGNIFICANT PREJUDICE TO THE DEFENSE AND DEFENDANT.

Preservation

"A defendant must make a formal demand on the record to preserve a speedy trial issue for appeal." *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999) (quotation marks and citation omitted). Mr. Stampone filed a pro per motion to dismiss for violation of his right to a speedy trial on March 15, 2021, and another motion through counsel on October 27, 2021, thereby preserving this issue for appellate review.

Standard of Review

A speedy-trial challenge is reviewed de novo as a question of constitutional law, but the trial court's factual findings are reviewed for clear error. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006).

Discussion

Mr. Stampone was denied his right to a speedy trial by over 21 months of delay between arrest and trial.

"A defendant has the right to a speedy trial under the federal and Michigan constitutions, which the Michigan Legislature statutorily enforces." *Cain*, 238 Mich App at 111, citing US Const, Am VI; Const 1963, art 1 § 20; MCL 768.1. By statute, it is "the duty of all public officers having duties to perform in any criminal case, to bring such case to a final determination without delay except as may be necessary to secure to the accused a fair and impartial trial." MCL 768.1. "Whether an accused's right to a speedy trial is violated depends on consideration of four factors: (1) the length of delay, (2) the reason for delay, (3) the defendant's assertion of the right, and (4) the prejudice to the defendant."

People v Rivera, 301 Mich App 188, 193; 835 NW2d 464 (2013) (quotation marks and citation omitted). The length of delay is measured from the date of arrest, and a delay of 18 months triggers a presumption of prejudice that the prosecution bears the burden of overcoming. *Id.*

Mr. Stampone was arrested on August 23, 2020, and incarcerated for just under 21 months before his trial began on May 16, 2022. While District Court proceedings went off without any delay, his appointed attorney requested and was granted a competency evaluation on September 29, 2020, at a hearing without Mr. Stampone's presence and against his wishes. On April 23, 2021, after receiving a report from the Center for Forensic Psychiatry (the Center), the court found Mr. Stampone competent to stand trial. While trial was originally set for December 2021, that date was cancelled. No further causes of delay occurred before Mr. Stampone's trial began.

Length of Delay

As indicated, the length of delay was uncommonly long, lasting 21 months. This requires a case-by-case consideration, but "the delay that can be tolerated for an ordinary street crime is considerably less than for a serious, complex conspiracy charge." *Barker*, 407 US at 530-531. While this case does not involve an ordinary street crime, it is far from complex for purposes of beginning trial. Indeed, the testimonial portion lasted less than a day and included only three witnesses.[11] Moreover, with Hieshetter returned to Michigan in December 2019 and Mr. Stampone arrested in August 2020, the State had eight months

[11] In light of the earlier discussion of the elements of kidnapping as applied to this case, this case is somewhat *legally* complex, but neither the parties nor trial court seemed to appreciate that, so this did not justify any delay below.

to prepare its case and be ready to go. Thus, the 21-month delay favors a violation of Mr. Stampone's right to a speedy trial.

Reasons for Delay

The reasons for delay also favor a violation of the right to a speedy trial. This factor requires a consideration of "whether the government or the criminal defendant is more to blame for that delay." *Doggett v United States*, 505 US 647, 651; 112 S Ct 2686; 120 L Ed 2d 520 (1992). This generally entails attributing each delay to one party or the other with unexplained delays or inexcusable delays caused by the court being attributed to the State. *People v Lown*, 488 Mich 242, 262; 794 NW2d 9 (2011). "A more neutral reason such as negligence or overcrowded courts should be weighted less heavily but nevertheless should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Barker*, 407 US at 531.

The 21-month delay can be separated into three periods. From August 23, 2020, to September 29, 2020, 37 days of delay occurred. Between September 29, 2020, and the court's finding that Mr. Stampone was competent to stand trial on April 23, 2021, 206 days of delays occurred. Thereafter, it took 388 days to begin Mr. Stampone's trial on May 16, 2022. The first period of 37 days is easily attributed to the State as this was ordinary delay that occurs in every felony case while the District Court ensures there is probable cause to bind the defendant over. The remaining delay is more complicated.

Some of the 206 days for the completion of a competency evaluation should be attributed to the State. Ordinarily, "delay caused by the defense weighs against the defendant." *Vermont v Brillon*, 556 US 81, 90; 129 S Ct 1283; 173 L Ed 2d 231 (2009). And "[b]ecause the attorney is the [defendant's] agent when acting, or failing to act, in

furtherance of the litigation, delay caused by the defendant's counsel is also charged against the defendant." *Id.* at 90-91 (quotation marks and citation omitted; second alteration in original). Accordingly, the 16 days of delay from April 7, 2021 to April 23, 2021, when the competency issue had to be adjourned due to Mr. Stampone's request for substitute counsel is attributed to the defense. But the remainder of the delay for the competency evaluation should not be attributed to the defense because defense counsel was not acting as Mr. Stampone's agent when he requested a competency evaluation.

Counsel moved for an evaluation on September 28, 2020. Despite the fact that the District Court bound Mr. Stampone over on September 14, 2020, and no proceedings in the trial court had taken place since, the motion was set for a hearing on October 30, 2020. The court granted the motion at the hearing, but Mr. Stampone was not present for the hearing.[12] Less than a week later, Mr. Stampone made it abundantly clear that he did not want a competency evaluation—or defense counsel as his attorney—by filing a "Petition to Contest Order for Competency Examination and Terminate Attorney and Order." The court ignored this request, as well as another request to terminate counsel's representation that Mr. Stampone filed on January 29, 2021.

Counsel was not acting as Mr. Stampone's agent when he requested a competency evaluation. It is axiomatic that an agent must "obey the instructions of his principal." *Burton v Burton*, 332 Mich 326, 337; 51 NW2d 297 (1952). See also *Zaremba Equipment, Inc v Harvo Nat'l Ins Co*, 280 Mich App 16, 38; 761 NW2d 151 (2008) ("The insured's agent

[12] In fact, this hearing was not even recorded. See December 16, 2022 Notice of Filing, attached to Docket Entry 31.

must strictly follow the insured's instructions which are clear, explicit, absolute, and unqualified."). An agent must also "act for the benefit of the [principal] with regard to matters within the scope of the relation." *Teadt v Lutheran Church Missouri Synod*, 237 Mich App 567, 581; 603 NW2d 816 (1999). By seeking a competency evaluation of Mr. Stampone, defense counsel not only delayed an adjudication of Mr. Stampone's case, but also created the possibility that he would be involuntarily medicated or held for up to 15 months for mental health treatment. MCL 330.2032; MCL 330.2034(1). In fact, while the trial court could only order Mr. Stampone to undergo treatment for up to 15 months to regain competency, thereafter the State could file a petition to continue treatment indefinitely. MCL 330.2034(3). None of this was for Mr. Stampone's benefit, and it certainly was not consistent with his instructions. Notably, despite being a critical stage of the proceedings, counsel failed to secure Mr. Stampone's presence at the hearing. Accordingly, defense counsel was not acting as Mr. Stampone's agent, and this delay should not be attributed to Mr. Stampone.

Even assuming some delay should be attributed to Mr. Stampone, most of these seven months of delay should be attributed to the State. Once a court determines that a defendant must be examined by the Center, the "examination shall be performed, defense counsel consulted, and a written report submitted to the court, prosecuting attorney, and defense counsel *within 60 days* of the date of the order." MCL 330.2028(1) (emphasis added). The trial court included this requirement in its order for a competency evaluation. A hearing must then be held within 5 days. MCL 330.2030(1); MCR 6.125(E). Yet on December 29, 2020, Dr. Steven Schostak informed the court that the report would not be

ready within 60 days. Although Dr. Schostak evaluated Mr. Stampone on December 26, 2020, he estimated that he would need another month to prepare his report. Nevertheless, the Register of Actions reflects that Dr. Schostak's report was not filed until April 2, 2021—154 days after the order for an evaluation was entered. While a hearing was initially scheduled on the fifth day after filing of the report, this was adjourned another 16 days due to the court granting Mr. Stampone's request for substitute counsel. Thus, the competency hearing was ultimately held on April 23, 2021.

At a minimum, the 94 days beyond the statutorily authorized period to complete the Center's report should be attributed to the State. Assuming Mr. Stampone bears the initial responsibility for the request for a competency evaluation, that request was only supposed to take 65 days by law—60 days for the evaluation and 5 days for the hearing. And, of course, the 16 days of delay due to the substitution of counsel also falls upon the defense. But any delay beyond that was caused by the State. The Center is a statutorily created entity under the jurisdiction of the Department of Health and Human Services. MCL 330.1128. Delays caused by the State's failure to appropriate sufficient funds to run its statutorily mandated agency are attributed to the State. See *Strunk v United States*, 412 US 434, 436; 93 S Ct 2260; 37 L Ed 2d 56 (1973) (discussing delays caused by an understaffed prosecutor's office). Thus, at least 94 days were attributable to the State.

The 388 days between the trial court's finding of competence and the start of Mr. Stampone's trial appear to have been caused by the COVID-19 pandemic. While the court found Mr. Stampone to be competent on April 23, 2021, it did not set a date for trial until August 9, 2021, when it scheduled trial for December 13, 2021. That date was then

adjourned without another date being set until, on February 7, 2022, trial was set for May 16, 2022. While there is no explanation in the record for this delay, given the timing, the court was presumably unable to hold a trial due to the COVID-19 pandemic. Regardless, unexplained delays are attributed to the State. *Lown*, 488 Mich at 262.

Again, the State bore the obligation to bring Mr. Stampone to trial. Any delay not caused by the defendant is attributed to the State. *Barker*, 407 US at 531. While it had no control over the COVID-19 pandemic, the State and the court did have control over the prejudice to Mr. Stampone from being incarcerated pending trial. Moreover, even neutral reasons for delay "should be considered since the ultimate responsibility for such circumstances must rest with the government rather than with the defendant." *Id.*

In total, the prosecution was responsible for at least 519 days while Mr. Stampone was responsible for no more than 112 days.

Assertion of the Right.

Mr. Stampone asserted his right to a speedy trial on multiple occasions. This factor is "closely related to the other factors" because the "strength of his efforts will be affected by the length of the delay, to some extent by the reason for the delay, and most particularly by the personal prejudice, which is not always readily identifiable, that he experiences." *Id.* In other words, the "more serious the deprivation, the more likely a defendant is to complain." *Id.* As a result, "defendant's assertion of his speedy trial right . . . is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Id.* Given Mr. Stampone's frequent requests for a speedy trial, this factor strongly favors a violation of his right to a speedy trial.

Prejudice to the Defendant

The prejudice to Mr. Stampone also strongly favors a violation of his right to a speedy trial. Prejudice must "be assessed in the light of the interests of defendants which the speedy trial right was designed to protect." *Id.* at 532. There are three such interests: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit *the possibility* that the defense will be impaired." *Id.* (emphasis added). The Supreme Court has elaborated on this prejudice:

> The time spent in jail awaiting trial has a detrimental impact on the individual. It often means loss of a job; it disrupts family life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative programs. The time spent in jail is simply dead time. Moreover, if a defendant is locked up, he is hindered in his ability to gather evidence, contact witnesses, or otherwise prepare his defense. Imposing those consequences on anyone who has not yet been convicted is serious. [*Id.* at 532-533.]

"Following a delay of 18 months or more, prejudice is presumed, and the burden shifts to the prosecution to show that there was no injury." *Williams*, 475 Mich at 262.

Mr. Stampone has suffered immense prejudice from the 21 months of pretrial incarceration, and the prosecution cannot satisfy its burden of proving the lack of prejudice. First, as noted at trial and in the PSIR, Mr. Stampone's health suffered drastically while incarcerated before trial. At nearly 70 years of age, Mr. Stampone lost 118 pounds and endured COVID-19 while held in an environment that prohibited social distancing. All this was on top of the prejudice ordinarily expected from pretrial incarceration: loss of employment and income, disruption of family life, and an inability to collect evidence in his own defense. Second, substantial evidence was lost during this delay. Specifically, Hieshetter died in September 2021. While the prosecution did not believe it had to disprove consent, as discussed earlier, this was not the case. Moreover, even assuming

consent was not an issue, Hieshetter could have testified about the full circumstances of her travels. At a minimum, her testimony would have borne on the issue of restriction of her movements or confinement to interfere with her liberty. In fact, there was no better witness, which is why Mr. Stampone attempted to admit Hieshetter's testimony from the probate court hearing to show her ability to make her own decisions (MH II, p 4; Defendant's Motion to Allow Evidence).

The trial court, in resolving Mr. Stampone's motion to dismiss for the violation of his right to a speedy trial, opined that Hieshetter would not have been competent to testify (MH I, p 5). This was wrong for two reasons. First, without questioning Hieshetter itself, this was purely supposition. Indeed, the court rules state, in relevant part, that a "person *is competent* to be a witness *unless*: (a) the court finds, *after questioning*, that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully or understandably." MRE 601 (emphasis added). Without having questioned Hieshetter, the court was obligated to proceed under the assumption that she was competent to testify. Second, the court was conflating two distinct issues. That the probate court determined Hieshetter was not capable of making decisions about her care and custody did not mean she was incompetent to testify. Whether someone has "sufficient physical or mental capacity or sense of obligation *to testify truthfully or understandably*," MRE 601 (emphasis added), is vastly different from whether an individual is "lacking sufficient understanding or capacity *to make or communicate informed decisions.*" MCL 700.1105(a) (emphasis added). Accordingly, the trial court erred by basing its denial of Mr. Stampone's motion to dismiss on the assumption that he was not prejudiced by Hieshetter's death.

ISSUE II

In light of the above, Mr. Stampone was deprived of his right to a speedy trial by 21 months of delay, at least 19 of which were caused by the prosecution. While Mr. Stampone has demonstrated prejudice, that is not his burden. Instead, the prosecution must prove he was not prejudiced, and it cannot do that given the harm to Mr. Stampone's person and his defense. The only remedy is vacatur of his conviction and dismissal with prejudice.

III. DEFENDANT'S SENTENCE THAT IS NEARLY TWICE THE TOP OF THE GUIDELINES MINIMUM SENTENCE RANGE IS A DISPROPORTIONATE SENTENCE.

Preservation

No steps need be taken to preserve a challenge to the reasonableness of a sentence. *People v Walden*, 319 Mich App 344, 350; 901 NW2d 142 (2017). Accordingly, this challenge to Mr. Stampone's sentence is preserved for appellate review.

Standard of Review

The reasonableness of a sentence is reviewed for an abuse of discretion. *Id.* at 351. "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Foster*, 319 Mich App 365, 375; 901 NW2d 127 (2017).

Discussion

The trial court's sentence that nearly doubles the top of the guidelines minimum sentence range is unreasonable.

A sentence is reasonable if it adheres to the principle of proportionality elucidated in *Milbourn*. *Walden*, 319 Mich App at 351. This requires that a sentencing court "must take into account the nature of the offense and the background of the offender." *People v Milbourn*, 435 Mich 630, 651; 461 NW2d 1 (1990). In imposing sentence, the court must take into account the guidelines minimum sentence range and justify the sentence to enable

appellate review. *People v Steanhouse*, 500 Mich 453, 470; 902 NW2d 327 (2017). When the court imposes a sentence outside of the guidelines range, it must provide "an explanation of why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been." *People v Lampe*, 327 Mich App 104, 126-127; 933 NW2d 314 (2019). This explanation generally considers:

> (1) the seriousness of the offense; (2) factors that were inadequately considered by the guidelines; and (3) factors not considered by the guidelines, such as the relationship between the victim and the aggressor, the defendant's misconduct while in custody, the defendant's expressions of remorse, and the defendant's potential for rehabilitation. [*Id.* (citation omitted).]

Mr. Stampone has no juvenile or adult criminal history, so he was assessed 0 PRV points. He was also only assessed 15 OV points—10 points for OV 10 (exploitation of a vulnerable victim) and 5 points for OV 17 (degree of negligence exhibited). This put him in the lowest cell of the Class A grid—21 to 35 months. The PSIR included the following in the section entitled, Defendant's Description of the Offense:

> His version of the crime: "I didn't kidnap my wife. She ran away. She got in a car and drove. I don't know how she got to Minnesota. I got a call to meet her there. She was cured of cancer but her daughter wouldn't take her to follow up appointments and killed her."
>
> What he feels his sentence should be: "None. I shouldn't be here because I didn't do anything. There is no way I should be sentenced for anything. I am going to appeal."
>
> Why he became involved in the crime: "She was dying. Judge Murkowski wouldn't let her get a second opinion. She got throat cancer and the doctor gave her an 8 hour treatment. She fell down and hit her head. They gave her hallucinating drugs. Her daughter went and wiped out her bank account of $37,000. Marta did not want her daughter to be conservator. The judge was paid off and I can prove it."

The trial court opted to depart and sentence Mr. Stampone to 5 to 25 years' imprisonment. The court indicated that it was departing because of "a short list of factors

that are simply not considered by the guidelines." (JT II, p 11.) While not entirely clear, it appears these unconsidered factors were Mr. Stampone's:

1. lack of understanding about cancer and how it was affecting Hieshetter (unlike her family);

2. taking Hieshetter away from her family for months;

3. "making medical decisions for her with predictably disastrous results;"

4. increasing Hieshetter's "physical and mental suffering exponentially;"

5. the "fear and distress" caused to Hieshetter's family;

6. depriving Hieshetter's family of the "basic human trait" of coming together when the matriarch is dying to honor, pray with, love, and make amends with her;

7. assertion in the PSIR that he did not kidnap Hieshetter but merely met her in Minnesota; and

8. statements in the PSIR "blaming the victim and making demonstrably false allegations of theft; demonstrably false allegations of the judicial system." [JT II, pp 10-13.]

The court also indicated that it was "going to reduce the sentence somewhat to reflect your advanced age," although it did not indicate how much it was "reducing" Mr. Stampone's sentence (JT II, p 13).

As an initial matter, many of the court's assertions in support of its sentence were not supported by the record. Nobody but Mr. Stampone could testify as to what he knew about cancer and how it was affecting Hieshetter. Moreover, there was no evidence that Mr. Stampone was making medical decisions for Hieshetter while they were at Mayo Clinic and Sloan Kettering. Presumably, medical professionals in Minnesota and New York required informed consent *from Hieshetter*, and there's no evidence to refute that assumption. There was also minimal support for the proposition that Hieshetter was harmed by Mr. Stampone's actions. To be sure, Amann testified that, when she picked

Hieshetter up in New York, Hieshetter was hoarse and wearing the same clothes she had on at the August 29, 2019 hearing. But Hieshetter was receiving treatment that a doctor presumably approved of at a renowned hospital. She then proceeded to live 2½ years longer than expected. Thus, the court's conclusions about Hieshetter's health, Mr. Stampone's knowledge thereof, and the consequences of Mr. Stampone's actions are simply not supported by the record.

To the extent that the court departed due to psychological injury to Hieshetter's family and loss of the ability to come together over the death of its matriarch, these conclusions were insufficient to justify the extent of the departure. OV 5 could not be scored since the sentencing offense was not a homicide, MCL 777.22(1), but it provides helpful guidance. OV 5 is scored at 15 points if "[s]erious psychological injury requiring professional treatment occurred to a victim's family." MCL 777.35(1)(a). Otherwise, no points may be scored. MCL 777.35(1)(b). An additional 15 OV points would increase Mr. Stampone's OV level by one, changing his sentencing guidelines from 21 to 35 months to 27 to 45 months. The court's sentence was still an additional 15 months over this range. Accordingly, this justification by the trial court did not provide sufficient support for the extent of its departure.

This leaves as support for the court's departure its comments on Mr. Stampone's statements in the PSIR. "A sentencing court may not base a sentence, even in part, on a defendant's failure to admit guilt, but a lack of remorse can be considered at sentencing." *People v Carlson*, 332 Mich App 663, 675; 958 NW2d 278 (2020) (citations omitted). In *People v Wesley*, 428 Mich 708; 411 NW2d 159 (1987), a fractured Court recognized three

factors for determining whether a sentence was improperly based on a defendant's maintenance of innocence: "(1) the defendant's maintenance of innocence after conviction, (2) the judge's attempt to get the defendant to admit guilt, and (3) the appearance that had the defendant affirmatively admitted guilt, his sentence would not have been so severe." *Id.* at 713 (opinion by ARCHER, J.).[13] Nevertheless, this Court has adopted the framework set out by Justice ARCHER. *People v Dobek*, 274 Mich App 58, 104; 732 NW2d 546 (2007).[14]

The trial court relied impermissibly on Mr. Stampone's assertion of innocence in the PSIR to increase his sentence. The court began this section of its sentencing by asserting it was not holding Mr. Stampone's exercise of his right to maintain his innocence against him (JT II, p 11). It then concluded that Mr. Stampone's statement that, in essence, he did not take Hieshetter to Minnesota but merely met her there was "contrary to all the undisputed evidence that was submitted at that trial." (JT II, p 12.) But as discussed at length earlier, the trial court was incorrect. There was actually no undisputed evidence as to how Hieshetter got from one place to another. Instead, there were mere *inferences.*

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[13] Only two justices agreed with this framework. Two other justices vehemently disagreed with the framework, finding the line between a lack of remorse and maintenance of innocence as nonexistent. *Wesley*, 428 Mich at 723-725 (BRICKLEY, J., concurring). The remaining three justices expressed skepticism with the framework but largely declined to wade into the debate based on the facts of the case. *Id.* at 727 (CAVANAGH, J., concurring); *Id.* at 728 (RILEY, C.J., concurring).

[14] For the reasons discussed by Judge RONAYNE KRAUSE on several occasions, this framework is nonsensical and incorrect. See, e.g., *Carlson*, 332 Mich App at 677-680 (RONAYNE KRAUSE, J., concurring in part and dissenting in part). Nevertheless, this Court is now stuck with it, MCR 7.215(J)(1), unless it elects to convene a conflict panel, MCR 7.215(J)(2), or is reversed by the Supreme Court. Thus, this brief will apply the binding law but notes the issue in case an appeal to the Supreme Court follows.

The court also concluded that Mr. Stampone's statements were "blaming the victim" and making "demonstrably false" allegations of theft and judicial misconduct. (JT II, pp 12-13.) The court is certainly entitled to its opinion, but once again it makes assertions that are not supported by anything in the record. No matter how unbelievable Mr. Stampone's statements in the PSIR may sound, the court could not punish him for those statements protesting his innocence and explaining his actions without *some* evidence to support this disbelief. See *People v Adams*, 430 Mich 679, 693; 425 NW2d 437 (1988) (discussing a court's ability to consider the defendant's "flagrant willingness to lie under oath" when supported by the record).

Looking specifically at the three factors identified in *Wesley*, it is apparent that the court was really punishing Mr. Stampone for maintaining his innocence. First, Mr. Stampone maintained his innocence after conviction, weighing in favor of an impermissible use. Second, the court did not attempt to get Mr. Stampone to admit guilt, so this factor weighs against an impermissible use. Third, there is certainly an appearance that the court would have imposed a lower sentence if Mr. Stampone admitted guilt. The trial court's explanation of its reasons for departing upward encompassed about four pages of the transcript, and about half of those pages were devoted to Mr. Stampone's statements in the PSIR. Moreover, as already discussed, the remainder of the court's justification is insufficient to affirm the sentence.

It's also notable that the challenge in this area is finding the line between maintaining innocence and a lack of remorse because "a lack of remorse can be considered in determining an individual's potential for rehabilitation. *Dobek*, 274 Mich App at 104.

But rehabilitation is a limited concern for Mr. Stampone. This is his first ever criminal offense, and he was 69 years old at the time of sentencing. Moreover, the court could disagree with Mr. Stampone's decisions, but the reality is that there is no evidence to indicate he was attempting anything but to assist Hieshetter, his significant other of about 10 years, in obtaining medical treatment. In truth, there's about zero chance of Mr. Stampone ever committing another offense. Under these facts, to the extent that this case warranted a departure because it differed from the average kidnapping, it warranted a *downward* departure. After all, kidnappings generally involve acts of violence, and there was no evidence of that here—quite the opposite.

For these reasons, Mr. Stampone's sentence is disproportionate to his offense and background. The Court must remand for ~~resentencing~~ AQUITAL.

IN THE CASE UNITED STATES V. JENNING 860 FED. APPX. 287 2021 U.S. APP. LEXIS 19669 ** 2021 WL 2767840 THE RULED THAT COVID VIRUS IS NOT AN EXCUSE TO VIOLATE THE RIGHT TO SPEEDY TRIAL, ALSO: JENNING AQUITED ON THE FACT THAT HE SPENT MORE TIME IN THEN WHAT THE SENTENCE SHOULD HAVE BEEN FOR THAT CRIME. HN 6 WE [* 290]

PARNALL CORRECTIONAL FACILITY

Housing Unit : 9

Offender Daily Schedule

Effective Date : 07/01/2024 (Monday)

Offender : 713769 - Stampone, Frederick **Wing : B** **Lock : Bot - B054**

Callout / Assignment - Description	Reporting Station	Room	Department	Depart	Arrive	Depart
ADA - EC-Communication with Hearing Aid 1	CC Officer	Control Center	Warden		01:00	01:01

Prisoners with a primary method of communication of Hearing Aids, shall bring their hearing aides to all callouts.

VALID ONLY ON THE EFFECTIVE DATE PRINTED ABOVE

Distribution : Offender

REASONS FOR GRANTING THE PETITION

IT IS A NATIONAL IMPORTANCE HAVING THE SUPREME COURT GRANT CERTIORARI TO PETITIONER AND PUBLISH THIS CASE FOR THE FOLLOWING REASONS:

THIS COURT NEEDS TO SHOW THE STATE OF MICHIGAN, ALL OTHER STATES, ALL OUR AMERICAN CITIZENS AND ~~AGR~~ EVERYONE THAT GAVE THEIR LIVES FIGHTING FOR OUR FREEDOM THAT WE DO HAVE A UNITED STATES CONSTITUTION AND IT WILL BE ENFORCED BY THIS COURT.

PETITIONER DID NOT DO THE CRIME AND EVEN IF HE DID THE CRIME THE SENTENCE IS ONE YEAR AND ONE DAY INCARCERATED, OR PROBATION IF THERE IS NO CRIMINAL HISTORY. PETITIONER HAS NO CRIMINAL HISTORY. BUT, THIS PETITION IS NOT ABOUT HIS CONVICTION. HIS APPEAL ON HIS CONVICTION IS PENDING IN MICHIGAN ~~COURT OF APPEALS~~ SUPREME COURT. PETITIONER DID NOT EXHAULT HIS STATE REMIDIES ON HIS CONVICTION, BUT HE DID EXHAULT HIS STATE REMIDES, US DISTRICT COURT, US COURT OF APPEALS AND REHEARING REMIDIES ON THE VIOLATION OF HIS RIGHT TO A SPEEDY TRIAL PROTECTED BY MICHIGAN COURT RULE MCR 6.004 AND THE 6TH AMENDMENT OF UNITED STATES CONSTITION.

PETITIONER IS OVER 71 YEARS OLD HAS BEEN ~~EN~~ INCARCERATED SINCE AUGUST 23, 2020 WHILE THE STATE COURTS KEEP PROLONGING HIS CASE. PETITIONER WIFE WAS MURDER DURNING HIS TIME OF BEING INCARCERATED AFTER HIS RIGHT TO SPEEDY TRIAL WAS VIOLATED AND I WAS NOT THERE TO PROTECT HER. PETITIONER LOST HIS WIFE, TIME SPENT WITH HIS WIFE AND ALL HIS ASSETS BEING INCARCERATED, AND STILL INCARCERATED. ENOUGHT IS ENOUGHT THIS COURT MUST ENTER A RULE THAT A DEFENDANT DOES NOT HAVE TO EXHAULT STATE REMIDIES ON ISSUES VIOLATING RULES PROTECTED BY OUR UNITED STATES CONSTITUTION. ALSO ENTER ANOTHER RULE THAT THE STATE SHALL HAVE NO MORE THEN THREE YEARS TO COMPLETE ALL DEFENDANTS STATE REMIDIES.

~~PETITIONER RESPECTFULL REQUEST FOR THE COURT TO COMBINE THIS CASE WITH HIS CASE, STAMPONE et al V. BRITTAN AMANN et al CASE NO. 20-CV-03874 AND US COURT OF APPEALS NO. 23-1617 THAT IS PENDING IN THIS COURT. EACH CASE IS DEPENDENT ON EACH OTHER. THIS CASE WAS~~

FILED IN UNITED STATES DISTRICT COURT OF NEWARK NEW JERSEY AND APPEALED IN UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

ALL JUDGES TAKE AN OATH TO OBEY, PROTECT AND ENFORCE OUR UNITED STATES CONSTITUTION. WE DO NOT HAVE A FREEDUM OR A CONSTITUTION IF JUDGES DO NOT ENFORCE IT.

PETITIONER STAMPONE SUFFERED A LOT MORE MENTAL ANGUISH AND SEVER EMOTIONAL DISTRESS DONE WITH WANTON AND RECKLESS DISEGARD OF CONSEQUENCES TO HIM FROM DEFENDANTS THEN TERRY GEN BOLLEA IN THE CASE TERRY GEN BOLLEA V. GAWKER MEDIA, LLC al. CASE # 8;12-CV-02348-T-27TBM;

CONCLUSION

PETITIONER RESPECTFULLY REQUEST THE COURT TO ENTER AN ORDER AND/OR JUDGMENT OF AQUITAL, DISMISS ALL CHARGES WITH PREJUDICES, INVESTIGATE MURDER OF MY WIFE MARTA JO AND ENTER JUDGMENT IN FAVOR OF PETITIONER FOR 100 MILLION DOLLARS.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Frederich Stampone

Date: NOVEMBER 10, 2024